

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
APPEAL FROM ORDER NO.688 OF 2007**

Shri Manohar Anna Jagtap .. Appellant  
(Orig. Defendant No.1)

Versus

1) Shri Arun Yashwant Pawar  
2) Shri Hanumant Shiva Jadhav  
3) Shri Rajaram Shiva Jadhav  
4) Shri Tanaji Shiva Jadhav... Respondents  
(Respondent No.1 Orig. Plaintiff)

Shri Vishwanath S. Talkute for the Appellant  
Shri Milind Deshmukh for the Respondent No.1  
Shri Vikas Mali for the Respondent Nos.2 to 4

**CORAM : S.R. SATHE, J.  
DATED : 28/09/2007**

**ORAL ORDER:-**

1. The Appellant-original defendant in Special Civil Suit No.24 of 2007 has preferred this appeal against the order passed by the CJSD, Malshiras whereby the Plaintiffs' application for ad-interim temporary injunction was granted and defendant No.1 was restrained from obstructing Plaintiffs' peaceful possession of the suit property and creating encumbrances or alienating the suit property till further orders. For the sake of convenience hereafter the parties shall be referred to as 'Plaintiffs' and 'defendant'.

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2. The brief facts giving rise to this appeal are as under :-

The suit property bearing Block No.46 admeasuring 1 hectare 32 R situated at village Mouje Medad Taluka Malshiras was owned by defendant Nos. 2 to 4. To the east and north of the said land, Plaintiff is having his land bearing Block No.45 and 218. The defendants had filed R.C.S. No.55 of 1991 for possession of the encroached land and on the basis of the said decree the defendants obtained possession. But according to Plaintiff, they took the possession of the land more than the land for which decree was passed. Hence, Plaintiffs filed another suit No.863 of 2001. The said suit is still pending. When there was dispute between Plaintiffs and defendant Nos. 2 to 4 pending in the Court, defendant Nos. 2 to 4 decided to sale the suit land. It is Plaintiffs' case that meetings with regard to sale took place at the house of defendant Nos. 2 to 4 on 2-3 occasions and finally on 18/05/2007 the defendant Nos. 2 to 4 agreed to sale the suit land to Plaintiff for Rs.3,50,000/- and accepted the amount of Rs.5,000/- as earnest money. On the same day, defendants handed over the possession of the suit land to Plaintiffs. However, thereafter all of a sudden the

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defendant Nos.2 to 4 sold the suit land to defendant No.1 on 30/05/2007. when Plaintiffs asked the defendant Nos.2 to 4 about the same, they gave evasive replies. Hence, Plaintiffs filed the present suit alleging that he was all along ready and willing to purchase the suit land as per the agreement. Plaintiffs, therefore, prayed for specific performance of the agreement as well as permanent injunction restraining defendants from obstructing Plaintiffs' possession of the suit.

3. On the date of the suit Plaintiffs also filed an application for temporary injunction. The learned CJSD, Malshiras issued Show Cause Notice to the defendants. In spite of the service of the notice the defendant Nos.2 to 4 did not file their say so also defendant No.1 did not appear and file his say, hence, on 27/06/2007 the learned trial Judge granted ex parte ad-interim injunction as mentioned above.

4. The defendant No.1 has challenged the above order in the present appeal. In this appeal before me, Shri Talkute, learned Advocate for the Appellant-original defendant No.1 submitted that learned Trial Judge has not at all applied his mind while passing the

impugned order. According to him, the learned Trial Judge ought to have considered the fact that even according to Plaintiff the defendant Nos.2 to 4 had sold the land to the defendant No.1. So, under such circumstances, learned Trial Judge should not have granted any ad-interim injunction. He, therefore, submitted that the order passed by the learned Trial Judge is illegal and the same be set aside.

5. As against this, the learned Advocate for the Respondent-original Plaintiff submitted that application Exh-5 is not finally decided by the learned Trial Judge and the present appellant-original defendant No.1 can in fact move the Trial Court for expeditious hearing of Exh-5. He also submitted that as the defendants did not show any cause inspite of the receipt of the notice, the learned Trial Judge was justified in passing the exparte ad-interim injunction. He, therefore, submitted that the appeal be dismissed.

6. It is not in dispute that the suit land was initially owned by the defendant Nos.2 to 4. It is agreed that the Plaintiff has made the claim on the basis of the oral agreement. So, under such

circumstances, the learned Trial Judge rightly refused to grant exparte ad-interim injunction immediately but on the contrary, he issued Show Cause Notice to the defendants. However, when the defendants and in particular defendant No.1 failed to file say and show cause the learned Trial Judge has granted exparte ad-interim injunction. Under the circumstances, when even after giving opportunity to the defendant No.1, the defendant No.1 had failed to show cause for not issuing any interim injunction, the learned Trial Judge was justified in granting exparte ad-interim injunction. It must be noted that he has granted the said ad-interim injunction only till further orders. So, when defendant No.1 has filed his say to the application Exh-5, it is in fact necessary to hear application Exh-5 on merits and decide the matter on merits. The defendant No.1 could have very well moved the Trial Court for the said purpose and could have prayed for expeditious hearing. Instead of following such course, the defendant No.1 has approached this Court.

7. It is well settled that the Appellate Court should not interfere with the discretionary order passed by the learned Trial Judge, unless it appears

that the discretion has been used arbitrarily or capriciously or without considering the material on record. In the instant case, there is nothing on record to show that the order passed by the learned Trial Judge is incorrect. Merely because in paragraph-1 of the order passed below Exh-5 the learned Trial Judge has observed that the Plaintiff has filed the instant suit for permanent injunction, that does not mean that the learned Trial Judge had not applied his mind. On the contrary, in the opening paragraph, the learned Trial Judge has only made observation with regard to the nature of the suit. In view of the above, I have absolutely no hesitation to hold that there is no reason to interfere with the order passed by the learned Trial Judge. Hence, I pass the following order:-

**O R D E R**

1. Appeal is dismissed.
2. The Trial Court is directed to decide Exh-5 on merits according to law as expeditiously as possible and in any event within one month from today.
3. The Trial Court should not get influenced by the observations made in this order and decide the application Exh-5 independently on its merits.

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( S . R . SATHE , J . )